

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BOBBY-RAY DUBOSE,

Plaintiff,

v.

JOHN KASICH, *et al.*,

Defendants.

Case No. 2:11-CV-00071
JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Norah McCann King

ORDER

On January 15, 2013 the Court issued an Opinion and Order granting the Motion for Summary Judgment of Defendants Becky Stinchomb, Dennis Murphy, and Donald Breckenridge. Consequently, Defendants Timothy J. Shriner and Jim Shriner, owners of Broad and James Towing, are the only remaining active Defendants. The record reflects that these Defendants did not move for summary judgment and the dispositive motion deadline has now passed.

Pursuant to Federal Rule of Civil Procedure 56(f):

After giving notice and a reasonable time to respond, the court may:

- (1) grant summary judgment for a nonmovant;
- (2) grant the motion on grounds not raised by a party;
- (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

Fed. R. Civ. P. 56(f). Moreover, pursuant to Rule 56(c), the Court may consider materials in the record, which the parties do not cite, in determining whether summary judgment is appropriate.

Fed. R. Civ. P. 56(c).

For the reasons detailed in its previous Opinions and Orders dismissing Defendants, the Court doubts that Plaintiff can demonstrate a material dispute of fact on a viable legal theory as

to the remaining Defendants. Specifically, the federal statutes Plaintiff cites in his Complaint do not create a private cause of action. Moreover, the record evidence before the Court does not reflect that Plaintiff's constitutional rights were violated when he was arrested and his car was towed.

Accordingly, Plaintiff is hereby on notice that the Court is considering granting summary judgment, pursuant to Rule 56(f), to Defendants Timothy J. Shriner and Jim Shriner. The Court will allow Plaintiff **TWENTY-ONE (21) DAYS** from the date of this Order to submit briefing and evidence demonstrating the existence of genuine issue of material fact and that the remaining Defendants are not entitled to judgment as a matter of law. Plaintiff is cautioned that failure to respond may result in dismissal of his claims. Finally, Plaintiff is advised that, in determining summary judgment, the Court will consider evidence already on the record, including the police report of Gahanna Police Officer Phillip Stacy.

IT IS SO ORDERED.

1-17-2013
DATE


EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE